IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

GBADEGBE, JSC

PWAMANG, JSC

DORDZIE, JSC

KOTEY, JSC

CIVIL APPEAL
NO. J4/33/2018

21ST MARCH, 2019

1. MRS AGNES AHADZI
2. PIONEER MALL LTD ..... PLAINTIFFS/REPONDENTS/APPELLANTS

VRS

1. BOYE SOWAH
(SUBST. BY SAMUEL NORTEY)
2. NII NORTEY ADJEIFIO
3. NUUMO ADJEI KWANKO II ..... DEFENDANTS/APPELLANTS/RESPONDENTS

JUDGMENT

PWAMANG, JSC:-

This is an appeal against the judgment of the Court of Appeal dated 4th June, 2015 wherein the Court of Appeal reversed the judgment of the High Court dated 4th July,

2011which went in favour of the plaintiffs/respondents/appellants. In this judgment we shall refer to the parties by their descriptions as in the trial court.

BACKGROUND OF THE CASE.

The case was commenced in 2000 and concerns a parcel of land at Okpoi-Gonno in Accra. In the course of the litigation 1st defendant died and was substituted and 2nd defendant too died but he was not substituted. 3rd defendant was originally not a party to the suit but he applied and was joined. The plaintiffs' claim to the land in dispute was based on purchase form Bortei Alabi family of Nungua who acquired it by customary grant from the Nungua Stool, had it documented in 1991 and registered under the Land Title Registration Act, 1986 (PNDCL 152) with Land Certificate No GA 9043 dated 16th March 1994. Upon the transfer of the land 2nd plaintiff was issued a Land Certificate No GA 13523 dated 22/3/1999. In their statements of defence the defendants contended that the land claimed by plaintiffs fell within land of Kle Musum Quarter/Tsie We Family of Teshie so they counter claimed for declaration of title. The 1st and 2nd defendants were sued because, according to the plaintiffs, they sold part of their land to persons who started to build on it and 3rd defendant was joined to the suit for the reason that he alleged to be the head of Tsie We family. However, this alleged capacity of 3rd defendant was vigorously challenged by the 1st and 2nd defendants who were members of that family.

The substantive issues set down for trial in the High Court were;

i) **Whether or not the plaintiffs are bona fide grantees of the land by virtue of Land Certificates Nos. GA 9043 and GA 13523,**
ii) **Whether or not the land in dispute forms part of Kle Musum Quarter land at Teshie,**
iii) **Whether or not 3rd defendant's title has priority over plaintiffs and their grantor , and**
iv) **Whether or not the plaintiffs' registration is fraudulent.**

A director of 2nd plaintiff gave evidence on behalf of the plaintiffs, tendered their land certificates and called two witnesses who testified in support of their case. The substitute for 1st defendant testified and relied on a number of documents and judgments tendered in evidence but did not call any witness. 3rd defendant gave a power of attorney to one Samuel Nii Adjei Duah to testify on his behalf but he too did not call any witness.

In his judgment, the High Court Judge held that 3rd defendant had no capacity to represent Tsie We family and dismissed his case but 3rd defendant did not appeal. The appeal which went before the Court of Appeal was filed by 1st defendant against the judgment of the High Court granting plaintiffs their reliefs. That notwithstanding, the 3rd defendant has filed a statement of case in this second and final appeal. Clearly, he cannot be heard as the appeal is against the decision of the Court of Appeal to which he was not a party. See **Anang Sowah v Adams [2009] SCGLR 111.** We notice that the plaintiffs misled the 3rd defendant by stating in their Notice of Appeal that he stood to be affected by the appeal and included his name for service but the Court of Appeal did not make any order either in favour of or against the 3rd defendant which may be varied in this appeal. Furthermore, since he did not challenge the High Court decision that he has no capacity in the case it means he was not a proper party to the case to begin with and is not entitled to be heard. In the circumstances we shall disregard his statement of case.

THE HIGH COURT JUDGMENT

After the High Court dismissed the case of the 3rd defendant the trial judge considered the evidence led by defendant's on the one hand and the plaintiffs and their witnesses on the other hand and at page 351 of the record he observed as follows;

"The substitute's evidence was empty and shorn of all the vital corroborative corollary that ought to ground any relief in terms of ownership of family land. Please see Ollennu's Principles of Customary Land Law2nd Edition page 141-142.

Mr John Aidoo Lawyer for the plaintiff made the following comment in his written submissions as regard the evidence of the substitute. He said;

'Not only did he fail to indicate the precise extent of his land by way of dimensions or other people he shares boundary with. Even worse was his inability to particularly show any connection between the said exhibits tendered by him and the disputed land'.

The substitute, to put it mildly, was just mechanical in his evidence."

Then at page 352 the trial judge concluded as follows'

"The 1st defendant failed to produce any evidence that would be considered sufficient (sic) so that a reasonable mind could conclude that the existence of the fact was more probable than its non-existence. See Evidence Act, 1975 (sic) NRCD 323 at Section 11 thereof.

The standard of proof required of a party in ownership of land suits is very well settled. Specifically under Section 11(1) and (4) and 12(1) & (2) of the Evidence Act. The burden of persuasion requires proof by preponderance of the probabilities. So that a party like the plaintiff in this case who is asserting title to land must do so to the degree of certainty of belief in the mind of the court (sic) of facts by which this court must be convinced of the existence of those facts as being more probable than otherwise.

I am convinced that the plaintiffs by their testimony have proved their case by the preponderance of the probabilities and are entitled to their reliefs. The plaintiffs have earned this view of the court quite aside from the fact that the defendants proved no match under the circumstances of the case. The plaintiffs set out to discharge the burden on them by the testimony of the 2nd plaintiff and other credible witnesses."

The trial judge thereafter examined the evidence in detail and stated that he was impressed by the testimony of plaintiff and his witnesses as against the defendants.

COURT OF APPEAL JUDGMENT

The main ground upon which the Court of Appeal reversed the finding of the trial judge on the evidence is captured at page 426 of the record in the following words;

"Had the trial court properly evaluated the evidence, the plaintiffs ought to have lost the case on the sole ground that by the 1992 High Court judgment exhibit 9 the land belongs to the KLE MUSUM QUARTER of Teshie to which the defendants' family belongs".

The Court of Appeal in their judgment indicated other grounds for their decision but those issues appeared to be premised on the assumption that Exhibit '9' was conclusive that the land in dispute in this case belongs to Kle Musum quarter of Teshie. They initially observed that, having regard to the documents relied upon by the parties, the trial judge ought to have *suo moto* ordered a superimposition of the maps tendered in evidence or visited the land to obtain a clear picture of the area but then they held that since the land in dispute was clear the case could nevertheless be determined. At page 423 they said that;

"Fortunately, the fact that the parties are *ad idem* that the land is at Okpoi Gonno makes a resolution of the fundamental issue possible. Our duty now is to shift (sic) through and determine from the evidence on record including the several documents and judgments that were tendered whether, as contended by the appellant, there has ever been a binding decision on the ownership of Okpoi Gonno."

That the parties were *ad idem* as to the land in dispute is further confirmed by the fact that in the course of the trial the 1st defendant amended his counterclaim and prayed for declaration of title to the exact land described by the plaintiffs which is shown on the map in the Land Certificate No 9043.

As stated earlier, the Court of Appeal saw Exhibit '9' as the binding judgment on ownership of Okpoi Gonno lands. Exhibit '9' is a judgment of the High Court presided over by Omari Sasu J dated 20th February, 1992 in Suit No L993/81 between Adjei Onanko II, who sued for land said to be at Okpoi Gonno on behalf of Kle Musum Quarter of Teshie, against one Ibrahim Mensah Komieteh also of Teshie who claimed that the Teshie Stool granted the land to his father. It appears that there was no appeal after the judgment. The Court of Appeal claimed that Omari Sasu J **"held that the equitable and beneficial interest or title in the land in dispute** ***described as being at Okpoi Gonno*** **(sic) is vested in Kle Musum quarter".**

APPEAL TO SUPREME COURT

In their Notice of Appeal in this court the plaintiffs stated only one ground of appeal namely; the judgment is against the weight of the evidence adduced at the trial. Though it was indicated in the notice of appeal that further grounds of appeal would be filed upon receipt of the record, none have been filed. Where an appeal is filed against a judgment on the ground that it is against the weight of the evidence, the appellate court is required to comb through the whole record of appeal and determine for itself if, having regard to the relevant law in the case and the evidence, the court from which the appeal has been brought was justified in its findings and conclusions. See **Tuakwa v Bosom [2001-2002] SCGLR 61.**

Plaintiffs at paragraph 18.0 of their statement of case argued that; **"Though he (respondent) relied on various judgments, he did not show that the judgments he had covered the land of the plaintiffs."** This submission goes to the heart of the judgment of the Court of Appeal since, according to them, Exhibit '9' covered the land in dispute. However, we have discovered that a close reading of Exhibit '9' casts a serious doubt on the correctness of that fundamental statement in the judgment of the Court of Appeal, namely; that Omari Sasu J held that equitable and beneficial interests in Okpoi-Gonno lands belongs to Kle Musum quarter of Teshie.

Permit us to quote Omari Sasu J at length from pages 128 to 129 of volume 2 of the record;

"It must be observed here that it is not the whole of defendant's land which is in dispute. What is in dispute is the area coloured green in exhibit 'C'. This area in dispute is roughly between 1/3 and ½ of the total land of defendant. This court in the course of the trial visited with the parties and their respective counsel Okpoi-Gonno, the land in dispute, ANETE's village and crossed the Accra-Tema motorway to ADJIRINGAO.

From what was seen, OKPOI GONN VILLAGE where defendant lives is completely outside the area in dispute. *Even though defendant maintained that since the village was founded by his late father his descendants have continued to live at the original OKPOI GONN, defendant's witness ODOI KWAME (DW1) said defendant is not living at the original site of OKPOI GONN.* ***Be the true position as it may, what was observed during the visit is that the only human habitation or human activity this court found within the area in dispute which is coloured green in Exh C was the village of ANETE.*** *This man claims he was granted his settlement by the plaintiff quarter. Apart from ANETE's settlement which is within the land in dispute there were no farms or settlements within the land in dispute. I accordingly find as a fact and hold that defendant is not in possession and occupation of the land in dispute."*

Omari Sasu J concluded his judgment thus; *"What is left is equitable or beneficial interest or tile. This I declare is vested in plaintiff's KLE MUSUM QUARTER in respect of the land in dispute, which land is coloured green in Exh C."*

By "the land in dispute" Omari Sasu J was obviously referring to his description of it upon the visit which excluded Okpoi Gonno. What is clear to us from the above quoted passages is that the land in dispute in the suit in Exhibit '9' did not include OKPOI GONNO and the judgment that was delivered did not declare Kle Musum quarter to be owners of Okpoi Gonno lands. The second point of note is that, irrespective of the manner Kle Musum quarter described the land they claimed in their statement of claim

in that suit, the map they tendered which was superimposed on the map of Ibrahim Mensah Komieteh did not extend to cover Okpoi Gonno where Ibrahim Mensah Komieteh was living at the time of the case. These facts which were personally observed by the High Court judge and stated in his judgment are binding against defendants since they relied on Exhibit '9' in this case. It is revealing that the defendants decided to tender Exhibit '9' without the accompanying composite plan referred to in the judgment which showed the extent of land Kle Musum quarter claimed in that suit. In any event, since in that case the claim of Kle Musum did not extend to Okpoi Gonno, if defendants had tendered the composite plan which was the basis of the judgment in Exhibit '9' the question here would have been why has their claim now been extended to Okpoi Gonno which they did not claim in the 1981 suit? Therefore, the Court of Appeal, with due regards, fell in error when they held that in Exhibit '9' the High Court held that Okpoi Gonno lands belong to Kle Musum quarter. On the contrary, Exhibit '9' would act as estoppel against Kle Musum quarter from laying claim to Okpoi Gonno lands since in the earlier suit they did not claim those lands. Consequently, we reverse that finding of the Court of Appeal and take the view that by Exhibit "9" Okpoi Gonno lands are not part of Kle Musum quarter lands.

The Court of Appeal by stating that Exhibit '9' was a judgment binding on the parties in the current case treated it as *res judicata* but in law a party who seeks to rely on *res judicata* is required to plead and prove the elements of the *res judicata*. In the case of **In Re Sekyedumase Stool Affairs; Nyame v Kesse alias Konto [1998-99]SCGLR 476,** Acquah, JSC (as he then was) at pages 478 to 479 of the Report said as follows;

"The plea of res judicata really encompasses three types of estoppel: cause of action estoppel, issue estoppel in the strict sense and issue estoppel in the wider sense. In summary, cause of action estoppel should properly be confined to cases where the cause of action and the parties (or their privies) are the same in both current and previous proceedings. In contrast, issue estoppel arises where such a defence is not available because the causes of action are not the same in both proceedings. Instead it

operates where issues, whether factual or legal, have either already been determined ***in previous proceedings between the parties*** *(issue estoppel in the strict sense) or where issues should have been litigated in previous proceedings but, owing to "negligence, inadvertence, or even accident," they were not brought before the court (issue estoppel in the wider sense), otherwise known as the principle in Henderson v Henderson (1843) 3 Hare 100; See also In re Yendi Skin Affairs; Andani v Abudulai [1981] GLR 866. CA. The rationale underlying this last estoppel is to encourage parties to bring forward their whole case so as to avoid a succession of related actions"*

So the three conditions for invoking issue estoppel are that;

1. The same issue must have been decided in the earlier case;
2. The judicial decision in the earlier case must have been final; and
3. The parties in the current case must be the same parties in the earlier case or their privies;

See also the House of Lords case of **Carl Zeiss Stiftung v Rayner and Keeler Ltd (No. 2) [1976] AC 853.**

In the instant case, *res judicata* would not apply because, first of all, the subject matter of the previous judgment did not cover Okpoi Gonno land which is the issue the Court of Appeal sought to determine in this case. Secondly, the plaintiffs and their grantors were neither parties in the earlier case nor are they privies of Ibrahim Mensah Kometeh who claimed he got the land from the Teshie Stool. This analysis applies in respect of the other judgments that the defendants tendered and relied upon at the trial. They failed to prove that the subject matter decided upon and the parties in any of those cases were the same as in the present case.

We have observed that the Court of Appeal, being under the impression that Exhibit "9" held that Okpoi Gonno lands are part of Kle Musum lands, stated in their judgment that if the plaintiffs had conducted a search before acquiring the land they sued for it would have come to their attention that Kle Musum Quarter registered a declaration at the

Lands Commission in 1965 claiming ownership of the land in dispute in this case. In the first place, as has been submitted by the plaintiffs in this appeal, which we are in agreement with, there was no evidence before the court to the effect that the land in dispute in this case was within Kle Musum quarter land so that claim by the Court of Appeal was, with the greatest respect, misconceived. It was the defendants who as their main defence alleged that plaintiffs' land was part of Kle Musum quarter land covered by series of judgments and the 1965 Declaration but that was denied by the plaintiffs wherefore it was set down at the application for directions as an issue for determination at the trial. Under those circumstances, the burden of proof of that issue was upon defendants to introduce sufficient evidence to avoid a ruling by the court against them. Sections 11(1), 14 and 17 of the Evidence Act, 1975 (NRCD 323) provide;

11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

"17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

14. Allocation of burden of persuasion

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.

The combined effect of sections 11(1), 14 and 17 of NRCD 323 is that if a party, such as the defendant in this case, fails to discharge the burdens of producing evidence and

persuasion in respect of any issue of fact which are upon him, the court is obligated to find against him on that issue. In the case of **Total Ghana Ltd v Thompson [2011] 1 SCGLR 458** this court, speaking through Anin Yeboah, JSC, said as follows at page 463 of the report;

"We think that by its conduct of neither calling the police alleged to have investigated the complaint against the plaintiff nor the person who had allegedly made statements that had implicated the plaintiff, the defendants may be said to have admitted plaintiff's claim that the allegations made against him were untrue. In the particular context of this case, in our thinking, an obligation on the part of defendant company to credible evidence to the trial court that would render the allegation on which its suspension of plaintiff was based, more probable than the version of a denial by plaintiff. By the operation of the relevant sections of the Evidence Act, 1975 (NRCD 323), relating to the burden of producing evidence, in particular, sections 11(4) and 14 of the Act, the defendant left the trial court with no option than coming to the conclusion that the allegation made against the plaintiff that had informed his suspension was untrue."

In the above case, though Total Ghana Ltd was the defendant, it carried the burden of proof on the averments they made in their defence regarding the grounds for dismissal of the plaintiff. They tendered only the police investigation report without calling the investigator to testify, which the Supreme Court held did not amount to sufficient proof. In similar vein, the defendants in the instant case tendered a number of judgments and the 1965 Declaration by Kle Musum quarter without proof that the plaintiffs' land was covered by these documents. As that issue was specifically set down for trial at the application for directions, this court, as an appellate court, is required to review the evidence on record and determine the case guided by the allocation of the respective burdens as was done in **Total Ghana Ltd v Thompson** (supra). In the light of our comments on Exhibit "9" and the other documents tendered by defendants, we are of the opinion that defendants failed to prove that the land in dispute is part of Kle Musum quarter lands referred to in the 1965 declaration.

Besides the failure of defendants to prove that plaintiffs land is covered by the 1965 Declaration, we have noticed that the probative value of that declaration by itself alone as proof of title of Kle Musum quarter to the land covered by it has been rejected by the Court of Appeal and the Supreme Court in some of the judgments tendered by the defendants themselves in this case. The map attached to the 1965 declaration tendered as Exhibit "7" can be found at page 104 of the record and the settlement of OTINSHI is therein indicated to be within the land declared by Kle Musum quarter as its land. Exhibit '3' tendered by the defendants is a judgment dated 17th November, 2000 delivered by Asare Korang J in a case filed by Dr Theodore Adjei Osae and Another in which they claimed against Kle Musum quarter for declaration of title to Otinshie lands. That decision of the High Court in favour of the plaintiffs and against Kle Musum quarter was affirmed by the Supreme Court which judgment dated 7th May, 2008 can be found at page 308 of volume 1 of the record. In that case Kle Musum quarter relied on the 1965 declaration among other grounds to claim ownership of Otinshie lands but that was rejected by the court in the following terms;

"Exhibit B was also tendered in the suit entitled Nii Adjei Obadzen II versus Nii Adjei Onanka II, Court of Appeal 11th May 1982 (unreported), where the observation was made that the said exhibit was a self serving document unsupported by any allodial owner and unilaterally prepared.

I have myself observed already that the decision to order the survey in 1961 of Kle Musum lands beyond the railway line was unilateral and unsupported by law or custom. The Statutory Declaration, Exhibit B, cannot therefore be regarded as carrying any weight or influence as far as Kle Musum quarter lands are concerned.

Assuming Exhibit B was at any time published, the publication had no legal significance because as Dr Odame Larbi (D1W6) said, the decision that Statutory Declarations be given wide publication was an administrative and not a legal decision."

The finding of the Court of Appeal referred to by Asare Korang J and his own finding, which has been affirmed by the Supreme Court, is to the effect that the 1965 Declaration of Kle Musum quarter was, like all statutory declarations claiming ownership of land, a self-serving document. See also the cases of **In Re Ashalley Botwe Lands [2003-2004] SCGLR 420 and Mondial Venner (Gh) Ltd v Amuah Gyebu XV [2011] 1 SCGLR 466.** The Court of Appeal in the instant case were bound by their previous decision and that of the Supreme Court on the status of the Kle Musum Declaration of 1965 and ought not to have relied on the comments of a High Court and accorded the Kle Musum Declaration special status.

Haven discounted the several documents tendered by the defendants, we are left with the testimonies of the parties, the documents of the plaintiffs which were in respect of the particular land in dispute in this case, and the evidence of the witnesses called by the plaintiffs. The plaintiffs' tendered their grantors' document of title showing that as far back as 1991 the Bortei Alabi family documented a grant of the land acquired in accordance with customary practices from the Nungua Stool. They had the land surveyed by the Director of Surveys as part of their application to register the land under the Land Title Registration Law and in 1994 they were issued with Land Title Certificate. Two witnesses from the Nungua Stool testified in support of the grant to the Bortei Alabi family. From the evidence on record, it was in 2000 that the defendants entered the land through persons they had sold portions to and that sparked off this litigation. The defendants had no description of the actual land in dispute and had to rely on plaintiff's document to describe the land they counter claimed for. At the start of the case the plaintiffs applied and were granted on order of interim injunction restraining the defendants and their grantees from developing the land pending the final determination of the suit. The defendants ignored the order of interim injunction wherefore the plaintiffs applied for their attachment for contempt of court. The court even went as far as making an order for the arrest of defendants' workmen. In the 1st defendant's statement of case he sought to rely on the structures built during this period in the teeth of the litigation and in violation of the court's orders as acts of

possession that should enure to the advantage of defendants. Such developments cannot have priority over plaintiffs grantors dealing with the land which on the evidence on the record was as far back as 1991, nine years earlier. See **Ankrah v Ofori [1963] 2GLR 403.**

We have evaluated the whole of the evidence of the plaintiffs as against that of the defendants and are of the view that since in the Declaration of Kle Musum quarter they stated that they originally purchased the land from the Nungua Stool and the plaintiffs trace their grant from the Nungua Stool, the failure by defendants to lead any evidence to prove that the disputed land is part of the area originally purchased from the Nungua Stool undermined their claim as they acknowledged the ownership of the Nungus Stool. See the case of **Apapam Stool v Ataa (1957) 1 WALR 117.** Therefore, considering the relative strengths of the rival cases, that of the plaintiffs who claim a purchase from the admitted owners looks more probable and ought to have been preferred by the Court of Appeal. The decision to reverse the trial court was in the circumstances unreasonable.

The Court of Appeal in their judgment made an issue of the discrepancy in the size of the land as stated in the lease between the Nugua Stool and Bortei Alabi family and what is recorded in the 2nd plaintiff's Land Certificate. The former document had 13.80 acres and the later 11.398 acres. The appellants in their statement of case argued that since the acreage in the certificate is smaller than that in the lease there ought not to be any problem. The respondent did not make any submissions in this appeal on this aspect of the case but suffice it to say that by section 36 of PNDCL 152, the Registrar of Lands may require the Director of Surveys to survey land for the purposes of the Land Title Registration Act. We have taken notice of the fact that the Director of Surveys signed the map in the Land Certificate tendered by the plaintiffs. As for the attachment of the lease of Bortei Alabi family to the certificate of 2nd plaintiff that has been explained in the body of the certificate and the Memorials. The interest registered for 2nd plaintiff is the unexpired term of the lease of Bortei Alabi family and the interest is subject to the terms and covenants of that lease, hence its attachment. Besides, the

interest of the Bortei Alabi family was acquired under customary law and a document only adds to such customary interest but cannot derogate from it. See **Ankrah v Ofori & Ors [1974] 1 GLR 185 C.A.**

The appellants have argued before us that the registration of their interest in the land makes their title indefeasible except it is proved that the registration was made by mistake or fraud. That was the import of the first issue that was set down for determination in the trial. This is what the statute provides;

"Effect of Registration

43. Indefeasibility of registration

(1) Subject to subsections (2), (3) and (4) of this section and to section 48, the rights of a registered proprietor of land whether acquired on first registration or acquired subsequently for valuable consideration or by an order of a Court, are indefeasible and shall be held by the proprietor together with the privileges and appurtenances attaching to the land free from any other interests and claims.

(2) The rights of a proprietor are subject to the interests or any other encumbrances and conditions shown in the land register.

(3) This section does not relieve a proprietor from a duty or an obligation to which the proprietor is otherwise a trustee.

(4) The registration of a person as the proprietor of land or an interest in land does not confer on that person a right to minerals not already vested in that person."

As was stated with authority by Atuguba, JSC in the case of **Republic v High Court (Fast Track Division); Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) [2009] SCGLR 390** at page 397;

" It is communis opinion among lawyers that the courts are servants of the legislature. Consequently, any act of a court that is contrary to a statute such as Act 722, s 58 (1)-(3) is, unless otherwise expressly or impliedly provided, a nullity…..Consequently, the courts have been bound to hold that the courts' own law, the common law as defined in article 11(2) of the 1992 Constitution, must give way to statute."

So, to the extent that defendants did not prove any of the exceptions above and mistake or fraud, the attacks on the plaintiff's certificate ought to have failed. The 1st defendant in his statement of case argued at paragraphs 30 to 35 thereof on an allegation of fraud against the grantors of plaintiff in relation to the signature of the Gborbu Wulomo, one of the head grantors, on their lease which is inserted in plaintiff's Land Certificate. But that issue about the alleged forgery of the signature of the Gborbu Wulomo was investigated by the police and plaintiffs grantors were prosecuted before the Greater Accra Regional Tribunal sitting at Tema which, by its judgment dated 13th February, 2002 tendered as Exhibit 'J' in the trial court, acquitted them of the charges. In our opinion, that rested that charge. Besides, that case was made in 2000 whereas the plaintiff's certificate is dated 22nd April, 1999 and there is no evidence that he became aware of even the allegation before the acquisition.

In the conclusion of his statement of case 1st defendant, submitted that the overwhelming evidence on record supported the judgment of the Court of Appeal. We disagree with that submission and have already in this opinion explained the reasons for our position that the judgment of the Court of Appeal is not supported by the evidence on record. In the result, we find merit in the appeal and accordingly allow same. We set aside the judgment of the Court of Appeal dated 4th June, 2015 and restore the judgment of the High Court dated 4th July, 2011 with a slight modification. The trial judge awarded plaintiffs general damages of GHC50,000.00 at the time taking into consideration the length of time they had been prevented from developing their land together with their foreign partners. Today is about eight years on since the High Court gave its judgment and taking that into account we award the plaintiffs general damages of GHC80,000.00.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

GBADEGBE, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

DORDZIE (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

KOTEY, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWABENA ANKAMAH OFEI-BADU FOR THE PLAINTIFS/RESPONDENTS/APPELLANTS.

OSAFO BUABENG FOR THE 1ST DEFENDANT/APPELLANT/RESPONDENT.

FOSU GYEABOUR FOR THE 3RD DEFENDANT/APPELLANT/RESPONDENT.